

PROSKAUER ROSE LLP

Russell L. Hirschhorn (*pro hac vice*)
Myron D. Rumeld (*pro hac vice* to be filed)
Joseph E. Clark (SBN 281021)
Eleven Times Square
New York, NY 10036-8299
Telephone: (212) 969-3000
Facsimile: (212) 969-2900
Email: rhirschhorn@proskauer.com
Email: mrumeld@proskauer.com
Email: jclark@proskauer.com

PROSKAUER ROSE LLP

Tulio D. Chirinos (*pro hac vice*)
2255 Glades Rd., Suite 421 Atrium
Boca Raton, FL 33431-7360
Telephone: (561) 241-7400
Facsimile: (561) 241-7145
Email: tchirinos@proskauer.com

PROSKAUER ROSE LLP

Scott P. Cooper (SBN 96905)
Jennifer L. Jones (SBN 284624)
2029 Century Park East, Suite 2400
Los Angeles, CA 90067
Telephone: (310) 557-2900
Facsimile: (310) 557-2193
Email: scooper@proskauer.com
Email: jljjones@proskauer.com

Attorneys for Defendants

**COHEN MILSTEIN SELLERS & TOLL
PLLC**

Michelle C. Yau
Daniel R. Sutter
Jamie L. Bowers
1100 New York Ave, NW, Fifth Floor
Washington DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699

**FEINBERG, JACKSON, WORTHMAN &
WASOW, LLP**

Todd Jackson (SBN 202598)
Nina Wasow (SBN 242047)
2030 Addison St., Suite 500
Berkeley, CA 94704
Telephone: (510) 269-7998
Facsimile: (510) 269-7994

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Yvonne Becker,

Plaintiff,

v.

Wells Fargo & Co.; Employee Benefit
Review Committee; Human Resources
Committee of the Board of Directors of
Wells Fargo & Co.; Ronald L. Sargent;
Wayne M. Hewett; Donald M. James;
Maria R. Morris; Wells Fargo Bank,
National; and Galliard Capital Management,

Defendants.

CASE NO. 4:20-CV-01803-JST

**STIPULATION AND ~~PROPOSED~~
ORDER TO DISMISS DEFENDANT
HUMAN RESOURCES COMMITTEE
OF THE BOARD OF DIRECTORS OF
WELLS FARGO & CO. WITHOUT
PREJUDICE**

1 Plaintiff, Yvonne Becker (“Plaintiff” or “Becker”), and Defendants Wells Fargo & Company;
2 Employee Benefit Review Committee; Human Resources Committee of the Board of Directors of
3 Wells Fargo & Company; Ronald L. Sargent; Wayne M. Hewett; Donald M. James; Maria R. Morris;
4 Wells Fargo Bank, National Association; and Galliard Capital Management, Inc. (“Defendants”), by
5 and through their respective counsel of record, hereby stipulate as follows.

6 WHEREAS:

7 1. Counsel for Defendants has represented that Defendant Human Resources Committee
8 of the Board of Directors of Wells Fargo & Company (“Defendant HRC”) did not have the power to
9 appoint members of the Defendant Employee Benefit Review Committee during the period of time
10 relevant to this action;

11 2. Counsel for Defendants has represented that Defendant HRC did not have or perform
12 any fiduciary functions or responsibilities related to the Wells Fargo & Company 401(k) Plan (the
13 “Plan”) during the relevant time period;

14 3. Counsel for Plaintiff has relied on Defendants’ counsel’s representations; and

15 4. The Defendants other than Defendant HRC and its members have sufficient resources
16 to satisfy any judgment in this action.

17 NOW, THEREFORE, THE PARTIES JOINTLY STIPULATE AS FOLLOWS:

18 1. Defendant HRC and its members (Defendants Ronald L. Sargent, Wayne M. Hewett,
19 Donald M. James, Maria R. Morris, and Does 21-30 defined in paragraphs 36–37 of the Complaint)
20 shall be dismissed from this action without prejudice pursuant to Federal Rule of Civil Procedure
21 41(a)(1)(A)(ii).

22 2. If, in the course of the litigation, Plaintiff discovers facts that would support a claim
23 that Defendant HRC and/or its individual members did have or perform any fiduciary functions or
24 responsibilities related to the Plan during the relevant time period, Defendants shall consent to
25 Plaintiff filing an amended operative Complaint (irrespective of whether the deadline to amend
26 pleadings has passed) if the sole purpose of the amendment is to add HRC and/or its individual
27 members as Defendants.

1 3. Any claims against HRC and/or its individual members shall be deemed to relate back
2 to the date of initial filing of the Complaint for purposes of the applicable statute of limitations.

3 4. In the event that Plaintiff amends the Complaint to add back HRC and/or its individual
4 members, Defendants reserve any and all rights and defenses as to HRC and/or its individual
5 members, including, without limitation, the right to seek dismissal of HRC and/or its individual
6 members by motion.

7 5. Defendants agree that Plaintiffs shall have reasonable access to HRC members for
8 discovery, including review of their electronically-stored information for appropriate search terms,
9 within the limits set forth in Federal Rule of Civil Procedure 26 and local rules of the Court.

10 Agreed to and submitted by:

11 Dated: May 7, 2020

/s/ Russell L. Hirschhorn

PROSKAUER ROSE LLP

Russell L. Hirschhorn (*pro hac vice*)

Myron D. Rumeld (*pro hac vice* to be filed)

Joseph E. Clark (SBN 281021)

Eleven Times Square

New York, NY 10036-8299

Telephone: (212) 969-3000

Facsimile: (212) 969-2900

Email: rhirschhorn@proskauer.com

Email: mrumeld@proskauer.com

Email: jclark@proskauer.com

PROSKAUER ROSE LLP

Tulio D. Chirinos (*pro hac vice*)

2255 Glades Rd., Suite 421 Atrium

Boca Raton, FL 33431-7360

Telephone: (561) 241-7400

Facsimile: (561) 241-7145

Email: tchirinos@proskauer.com

PROSKAUER ROSE LLP

Scott P. Cooper (SBN 96905)

Jennifer L. Jones (SBN 284624)

2029 Century Park East, Suite 2400

Los Angeles, CA 90067

Telephone: (310) 557-2900

Facsimile: (310) 557-2193

Email: scooper@proskauer.com

Email: jljones@proskauer.com

Attorneys for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/ Nina Wasow

COHEN MILSTEIN SELLERS & TOLL PLLC

Michelle C. Yau

Daniel R. Sutter

Jamie L. Bowers

1100 New York Ave, NW, Fifth Floor

Washington DC 20005

Telephone: (202) 408-4600

Facsimile: (202)408-4699

**FEINBERG, JACKSON, WORTHMAN & WASOW,
LLP**

Todd Jackson (SBN 202598)

Nina Wasow (SBN 242047)

2030 Addison St., Suite 500

Berkeley, CA 94704

Telephone: (510) 269-7998

Facsimile: (510) 269-7994

Attorneys for Plaintiffs

~~[PROPOSED]~~ ORDER

Pursuant to the stipulation, IT IS SO ORDERED: Defendants Human Resources Committee of the Board of Directors of Wells Fargo & Company, Ronald L. Sargent, Wayne M. Hewett, Donald M. James, Maria R. Morris, and Does 21-30 are hereby DISMISSED from this action without prejudice. Plaintiff shall be permitted to amend the Complaint to add the Human Resources Committee and/or its individual members as Defendants in the event that discovery reveals facts supporting their status as fiduciaries of the Wells Fargo & Company 401(k) Plan, with Defendants reserving any and all rights and defenses as to the Human Resources Committee and/or its individual members. Any claims against the Human Resources Committee and/or its individual members shall relate back to the date of the original filing of the Complaint in this action.

Dated: May 8, 2020


JON S. TIGAR
United States District Judge